

AMENDED IN SENATE APRIL 20, 2010

**SENATE BILL**

**No. 1428**

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**Introduced by Senator Pavley**

February 19, 2010

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An act to amend Sections 629.50, 629.51, 629.52, 629.53, 629.54, 629.56, 629.58, 629.60, 629.62, 629.64, 629.66, 629.68, 629.70, 629.72, 629.74, 629.76, 629.78, 629.80, 629.82, 629.86, 629.88, 629.89, 629.90, ~~and 629.94~~ 629.94, *and* 629.98 of the Penal Code, relating to intercepted communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1428, as amended, Pavley. Criminal investigation: interception of communications.

(1) Existing law allows for an application authorizing the interception of a wire, electronic pager, or electronic cellular telephone to be made by the Attorney General or a district attorney to a judge of a superior court, as specified. Existing law defines wire communication, electronic pager communication, and electronic cellular telephone communication for these purposes.

This bill would delete the references to electronic pager communication and electronic cellular telephone communication and replace those references with references to electronic communication, and would define electronic communication as any transfer of signs, signals, writings, images, sounds, data, or intelligence by a wire, radio, electromagnetic, photoelectric, or photo-optical system, with specified exceptions for tone-only paging, tracking devices, or electronic funds transfer information, as provided. This bill would thereby authorize the above persons to make an application for an order permitting the interception of electronic communications, as defined.

(2) Under existing law an application for a communications interception may be made informally and granted orally if an emergency situation exists, and other factors are present. Existing law conditions the oral grant of the informal application on the filing of a written application for an order within 48 hours of the oral approval.

This bill would condition the granting of an oral approval on the filing of a written application by midnight of the second full court day after the oral approval is made.

(3) Under existing law an order may not authorize a communications interception for longer than a maximum of 30 days.

This bill would provide that the 30 days would not commence until the day of the actual initial interception, or 10 days after the issuance of the order, whichever comes first.

(4) Existing law requires an order for a communications interception to require that written reports to be made to the judge authorizing the interception, as provided. Existing law requires that a report be filed at least every 6 days until the authorization is terminated.

This bill would require the reports to be made every 10 days, commencing with the date of the signing of the order authorizing the interception.

(5) *Existing law repeals the chapter containing these provisions regarding the interception of communications on January 1, 2012.*

*This bill would extend the repeal date on these provisions until January 1, 2014.*

~~(5)~~

(6) This bill would make other conforming and clarifying changes.

~~(6)~~

(7) Existing law specifies obligations for parties applying for and carrying out orders to intercept communication, and makes a violation of these provisions a misdemeanor or felony.

This bill would broaden the types of communication to which these crimes would apply. By creating new crimes, *and by extending the repeal date of existing crimes*, this bill would impose a state-mandated local program.

~~(7)~~

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 629.50 of the Penal Code is amended to  
2 read:

3 629.50. (a) Each application for an order authorizing the  
4 interception of a wire or electronic communication shall be made  
5 in writing upon the personal oath or affirmation of the Attorney  
6 General, Chief Deputy Attorney General, or Chief Assistant  
7 Attorney General, Criminal Law Division, or of a district attorney,  
8 or the person designated to act as district attorney in the district  
9 attorney's absence, to the presiding judge of the superior court or  
10 one other judge designated by the presiding judge. An ordered list  
11 of additional judges may be authorized by the presiding judge to  
12 sign an order authorizing an interception. One of these judges may  
13 hear an application and sign an order only if that judge makes a  
14 determination that the presiding judge, the first designated judge,  
15 and those judges higher on the list are unavailable. Each application  
16 shall include all of the following information:

17 (1) The identity of the investigative or law enforcement officer  
18 making the application, and the officer authorizing the application.

19 (2) The identity of the law enforcement agency that is to execute  
20 the order.

21 (3) A statement attesting to a review of the application and the  
22 circumstances in support thereof by the chief executive officer, or  
23 his or her designee, of the law enforcement agency making the  
24 application. This statement shall name the chief executive officer  
25 or the designee who effected this review.

26 (4) A full and complete statement of the facts and circumstances  
27 relied upon by the applicant to justify his or her belief that an order  
28 should be issued, including (A) details as to the particular offense  
29 that has been, is being, or is about to be committed, (B) the fact  
30 that conventional investigative techniques had been tried and were  
31 unsuccessful, or why they reasonably appear to be unlikely to  
32 succeed or to be too dangerous, (C) a particular description of the  
33 nature and location of the facilities from which or the place where  
34 the communication is to be intercepted, (D) a particular description  
35 of the type of communication sought to be intercepted, and (E) the

1 identity, if known, of the person committing the offense and whose  
2 communications are to be intercepted, or if that person's identity  
3 is not known, then the information relating to the person's identity  
4 that is known to the applicant.

5 (5) A statement of the period of time for which the interception  
6 is required to be maintained, and if the nature of the investigation  
7 is such that the authorization for interception should not  
8 automatically terminate when the described type of communication  
9 has been first obtained, a particular description of the facts  
10 establishing probable cause to believe that additional  
11 communications of the same type will occur thereafter.

12 (6) A full and complete statement of the facts concerning all  
13 previous applications known, to the individual authorizing and to  
14 the individual making the application, to have been made to any  
15 judge of a state or federal court for authorization to intercept wire  
16 or electronic communications involving any of the same persons,  
17 facilities, or places specified in the application, and the action  
18 taken by the judge on each of those applications. This requirement  
19 may be satisfied by making inquiry of the California Attorney  
20 General and the United States Department of Justice and reporting  
21 the results of these inquiries in the application.

22 (7) If the application is for the extension of an order, a statement  
23 setting forth the number of communications intercepted pursuant  
24 to the original order, and the results thus far obtained from the  
25 interception, or a reasonable explanation of the failure to obtain  
26 results.

27 (8) An application for modification of an order may be made  
28 when there is probable cause to believe that the person or persons  
29 identified in the original order have commenced to use a facility  
30 or device that is not subject to the original order. Any modification  
31 under this subdivision shall only be valid for the period authorized  
32 under the order being modified. The application for modification  
33 shall meet all of the requirements in paragraphs (1) to (6), inclusive,  
34 and shall include a statement of the results thus far obtained from  
35 the interception, or a reasonable explanation for the failure to obtain  
36 results.

37 (b) The judge may require the applicant to furnish additional  
38 testimony or documentary evidence in support of an application  
39 for an order under this section.

(c) The judge shall accept a facsimile copy of the signature of any person required to give a personal oath or affirmation pursuant to subdivision (a) as an original signature to the application. The original signed document shall be sealed and kept with the application pursuant to the provisions of Section 629.66 and custody of the original signed document shall be in the same manner as the judge orders for the application.

SEC. 2. Section 629.51 of the Penal Code is amended to read:

629.51. (a) For the purposes of this chapter, the following terms have the following meanings:

(1) “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of a like connection in a switching station), furnished or operated by any person engaged in providing or operating these facilities for the transmission of communications.

(2) “Electronic communication” means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system, but does not include any of the following:

(A) Any communication defined in subdivision (a).

(B) Any communication made through a tone-only paging device.

(C) Any communication from a tracking device.

(D) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(3) “Tracking device” means an electronic or mechanical device that permits the tracking of the movement of a person or object.

1 (4) “Aural transfer” means a transfer containing the human  
2 voice at any point between and including the point of origin and  
3 the point of reception.

4 (b) *This chapter applies to the interceptions of wire and*  
5 *electronic communications. It does not apply to stored*  
6 *communications or stored content.*

7 SEC. 3. Section 629.52 of the Penal Code is amended to read:

8 629.52. Upon application made under Section 629.50, the judge  
9 may enter an ex parte order, as requested or modified, authorizing  
10 interception of wire or electronic communications initially  
11 intercepted within the territorial jurisdiction of the court in which  
12 the judge is sitting, if the judge determines, on the basis of the  
13 facts submitted by the applicant, all of the following:

14 (a) There is probable cause to believe that an individual is  
15 committing, has committed, or is about to commit, one of the  
16 following offenses:

17 (1) Importation, possession for sale, transportation, manufacture,  
18 or sale of controlled substances in violation of Section 11351,  
19 11351.5, 11352, 11370.6, 11378, 11378.5, 11379, 11379.5, or  
20 11379.6 of the Health and Safety Code with respect to a substance  
21 containing heroin, cocaine, PCP, methamphetamine, or their  
22 precursors or analogs where the substance exceeds 10 gallons by  
23 liquid volume or three pounds of solid substance by weight.

24 (2) Murder, solicitation to commit murder, the commission of  
25 a felony involving a destructive device in violation of Section  
26 12303, 12303.1, 12303.2, 12303.3, 12303.6, 12308, 12309, 12310,  
27 or 12312, or a violation of Section 209.

28 (3) Any felony violation of Section 186.22.

29 (4) Any felony violation of Section 11418, relating to weapons  
30 of mass destruction, Section 11418.5, relating to threats to use  
31 weapons of mass destruction, or Section 11419, relating to  
32 restricted biological agents.

33 (5) An attempt or conspiracy to commit any of the  
34 above-mentioned crimes.

35 (b) There is probable cause to believe that particular  
36 communications concerning the illegal activities will be obtained  
37 through that interception, including, but not limited to,  
38 communications that may be utilized for locating or rescuing a  
39 kidnap victim.

1 (c) There is probable cause to believe that the facilities from  
2 which, or the place where, the wire or electronic communications  
3 are to be intercepted are being used, or are about to be used, in  
4 connection with the commission of the offense, or are leased to,  
5 listed in the name of, or commonly used by the person whose  
6 communications are to be intercepted.

7 (d) Normal investigative procedures have been tried and have  
8 failed or reasonably appear either to be unlikely to succeed if tried  
9 or to be too dangerous.

10 SEC. 4. Section 629.53 of the Penal Code is amended to read:  
11 629.53. The Judicial Council may establish guidelines for  
12 judges to follow in granting an order authorizing the interception  
13 of any wire or electronic communications.

14 SEC. 5. Section 629.54 of the Penal Code is amended to read:  
15 629.54. Each order authorizing the interception of any wire or  
16 electronic communication shall specify all of the following:

17 (a) The identity, if known, of the person whose communications  
18 are to be intercepted, or if the identity is not known, then that  
19 information relating to the person's identity known to the applicant.

20 (b) The nature and location of the communication facilities as  
21 to which, or the place where, authority to intercept is granted.

22 (c) A particular description of the type of communication sought  
23 to be intercepted, and a statement of the illegal activities to which  
24 it relates.

25 (d) The identity of the agency authorized to intercept the  
26 communications and of the person making the application.

27 (e) The period of time during which the interception is  
28 authorized including a statement as to whether or not the  
29 interception shall automatically terminate when the described  
30 communication has been first obtained.

31 SEC. 6. Section 629.56 of the Penal Code is amended to read:

32 629.56. (a) Upon informal application by the Attorney General,  
33 Chief Deputy Attorney General, or Chief Assistant Attorney  
34 General, Criminal Law Division, or a district attorney, or the person  
35 designated to act as district attorney in the district attorney's  
36 absence, the presiding judge of the superior court or the first  
37 available judge designated as provided in Section 629.50 may  
38 grant oral approval for an interception, without an order, if he or  
39 she determines all of the following:

1 (1) There are grounds upon which an order could be issued  
2 under this chapter.

3 (2) There is probable cause to believe that an emergency  
4 situation exists with respect to the investigation of an offense  
5 enumerated in this chapter.

6 (3) There is probable cause to believe that a substantial danger  
7 to life or limb exists justifying the authorization for immediate  
8 interception of a private wire or electronic communication before  
9 an application for an order could with due diligence be submitted  
10 and acted upon.

11 (b) Approval for an interception under this section shall be  
12 conditioned upon filing with the judge, by midnight of the second  
13 full court day after the oral approval, a written application for an  
14 order which, if granted consistent with this chapter, shall also recite  
15 the oral approval under this subdivision and be retroactive to the  
16 time of the oral approval.

17 SEC. 7. Section 629.58 of the Penal Code is amended to read:

18 629.58. No order entered under this chapter shall authorize the  
19 interception of any wire or electronic communication for any period  
20 longer than is necessary to achieve the objective of the  
21 authorization, nor in any event longer than 30 days, commencing  
22 on the day of the initial interception, or 10 days after the issuance  
23 of the order, whichever comes first. Extensions of an order may  
24 be granted, but only upon application for an extension made in  
25 accordance with Section 629.50 and upon the court making findings  
26 required by Section 629.52. The period of extension shall be no  
27 longer than the authorizing judge deems necessary to achieve the  
28 purposes for which it was granted and in no event any longer than  
29 30 days. Every order and extension thereof shall contain a provision  
30 that the authorization to intercept shall be executed as soon as  
31 practicable, shall be conducted so as to minimize the interception  
32 of communications not otherwise subject to interception under this  
33 chapter, and shall terminate upon attainment of the authorized  
34 objective, or in any event at the time expiration of the term  
35 designated in the order or any extensions. In the event the  
36 intercepted communication is in a foreign language, an interpreter  
37 of that foreign language may assist peace officers in executing the  
38 authorization provided in this chapter, provided that the interpreter  
39 has the same training as any other interceptor authorized under  
40 this chapter and provided that the interception shall be conducted



1 so as to minimize the interception of communications not otherwise  
2 subject to interception under this chapter.

3 SEC. 8. Section 629.60 of the Penal Code is amended to read:

4 629.60. Whenever an order authorizing an interception is  
5 entered, the order shall require reports in writing or otherwise to  
6 be made to the judge who issued the order showing the number of  
7 communications intercepted pursuant to the original order, and a  
8 statement setting forth what progress has been made toward  
9 achievement of the authorized objective, or a satisfactory  
10 explanation for its lack, and the need for continued interception.  
11 If the judge finds that progress has not been made, that the  
12 explanation for its lack is not satisfactory, or that no need exists  
13 for continued interception, he or she shall order that the interception  
14 immediately terminate. The reports shall be filed with the court at  
15 the intervals that the judge may require, but not less than one for  
16 each period of 10 days, commencing with the date of the signing  
17 of the order, and shall be made by any reasonable and reliable  
18 means, as determined by the judge.

19 SEC. 9. Section 629.62 of the Penal Code is amended to read:

20 629.62. (a) The Attorney General shall prepare and submit an  
21 annual report to the Legislature, the Judicial Council, and the  
22 Director of the Administrative Office of the United States Court  
23 on interceptions conducted under the authority of this chapter  
24 during the preceding year. Information for this report shall be  
25 provided to the Attorney General by any prosecutorial agency  
26 seeking an order pursuant to this chapter.

27 (b) The report shall include all of the following data:

28 (1) The number of orders or extensions applied for.

29 (2) The kinds of orders or extensions applied for.

30 (3) The fact that the order or extension was granted as applied  
31 for, was modified, or was denied.

32 (4) The number of wire or electronic communication devices  
33 that are the subject of each order granted.

34 (5) The period of interceptions authorized by the order, and the  
35 number and duration of any extensions of the order.

36 (6) The offense specified in the order or application, or extension  
37 of an order.

38 (7) The identity of the applying law enforcement officer and  
39 agency making the application and the person authorizing the  
40 application.

1 (8) The nature of the facilities from which or the place where  
2 communications were to be intercepted.

3 (9) A general description of the interceptions made under the  
4 order or extension, including (A) the approximate nature and  
5 frequency of incriminating communications intercepted, (B) the  
6 approximate nature and frequency of other communications  
7 intercepted, (C) the approximate number of persons whose  
8 communications were intercepted, and (D) the approximate nature,  
9 amount, and cost of the manpower and other resources used in the  
10 interceptions.

11 (10) The number of arrests resulting from interceptions made  
12 under the order or extension, and the offenses for which arrests  
13 were made.

14 (11) The number of trials resulting from the interceptions.

15 (12) The number of motions to suppress made with respect to  
16 the interceptions, and the number granted or denied.

17 (13) The number of convictions resulting from the interceptions  
18 and the offenses for which the convictions were obtained and a  
19 general assessment of the importance of the interceptions.

20 (14) Except with regard to the initial report required by this  
21 section, the information required by paragraphs (9) to (13),  
22 inclusive, with respect to orders or extensions obtained in a  
23 preceding calendar year.

24 (15) The date of the order for service of inventory made pursuant  
25 to Section 629.68, confirmation of compliance with the order, and  
26 the number of notices sent.

27 (16) Other data that the Legislature, the Judicial Council, or the  
28 Director of the Administrative Office shall require.

29 (c) The annual report shall be filed no later than April of each  
30 year, and shall also include a summary analysis of the data reported  
31 pursuant to subdivision (b). The Attorney General may issue  
32 regulations prescribing the content and form of the reports required  
33 to be filed pursuant to this section by any prosecutorial agency  
34 seeking an order to intercept wire or electronic communications.

35 (d) The Attorney General shall, upon the request of an individual  
36 making an application, provide any information known to him or  
37 her as a result of these reporting requirements that would enable  
38 the individual making an application to comply with paragraph  
39 (6) of subdivision (a) of Section 629.50.

40 SEC. 10. Section 629.64 of the Penal Code is amended to read:

1     629.64. The contents of any wire or electronic communication  
2 intercepted by any means authorized by this chapter shall, if  
3 possible, be recorded on any recording media. The recording of  
4 the contents of any wire or electronic communication pursuant to  
5 this chapter shall be done in a way that will protect the recording  
6 from editing or other alterations and ensure that the recording can  
7 be immediately verified as to its authenticity and originality and  
8 that any alteration can be immediately detected. In addition, the  
9 monitoring or recording device shall be of a type and shall be  
10 installed to preclude any interruption or monitoring of the  
11 interception by any unauthorized means. Immediately upon the  
12 expiration of the period of the order, or extensions thereof, the  
13 recordings shall be made available to the judge issuing the order  
14 and sealed under his or her directions. Custody of the recordings  
15 shall be where the judge orders. They shall not be destroyed except  
16 upon an order of the issuing or denying judge and in any event  
17 shall be kept for 10 years. Duplicate recordings may be made for  
18 use or disclosure pursuant to the provisions of Sections 629.74  
19 and 629.76 for investigations. The presence of the seal provided  
20 for by this section, or a satisfactory explanation for the absence  
21 thereof, shall be a prerequisite for the use or disclosure of the  
22 contents of any wire or electronic communication or evidence  
23 derived therefrom under Section 629.78.

24     SEC. 11. Section 629.66 of the Penal Code is amended to read:

25     629.66. Applications made and orders granted pursuant to this  
26 chapter shall be sealed by the judge. Custody of the applications  
27 and orders shall be where the judge orders. The applications and  
28 orders shall be disclosed only upon a showing of good cause before  
29 a judge or for compliance with the provisions of subdivisions (b)  
30 and (c) of Section 629.70 and shall not be destroyed except on  
31 order of the issuing or denying judge, and in any event shall be  
32 kept for 10 years.

33     SEC. 12. Section 629.68 of the Penal Code is amended to read:

34     629.68. Within a reasonable time, but no later than 90 days,  
35 after the termination of the period of an order or extensions thereof,  
36 or after the filing of an application for an order of approval under  
37 Section 629.56 which has been denied, the issuing judge shall issue  
38 an order that shall require the requesting agency to serve upon  
39 persons named in the order or the application, and other known

1 parties to intercepted communications, an inventory which shall  
2 include notice of all of the following:

3 (a) The fact of the entry of the order.

4 (b) The date of the entry and the period of authorized  
5 interception.

6 (c) The fact that during the period wire or electronic  
7 communications were or were not intercepted.

8 The judge, upon filing of a motion, may, in his or her discretion,  
9 make available to the person or his or her counsel for inspection  
10 the portions of the intercepted communications, applications, and  
11 orders that the judge determines to be in the interest of justice. On  
12 an ex parte showing of good cause to a judge, the serving of the  
13 inventory required by this section may be postponed. The period  
14 of postponement shall be no longer than the authorizing judge  
15 deems necessary to achieve the purposes for which it was granted.

16 SEC. 13. Section 629.70 of the Penal Code is amended to read:

17 629.70. (a) A defendant shall be notified that he or she was  
18 identified as the result of an interception that was obtained pursuant  
19 to this chapter. The notice shall be provided prior to the entry of  
20 a plea of guilty or nolo contendere, or at least 10 days prior to any  
21 trial, hearing, or proceeding in the case other than an arraignment  
22 or grand jury proceeding.

23 (b) Within the time period specified in subdivision (c), the  
24 prosecution shall provide to the defendant a copy of all recorded  
25 interceptions from which evidence against the defendant was  
26 derived, including a copy of the court order, accompanying  
27 application, and monitoring logs.

28 (c) Neither the contents of any intercepted wire or electronic  
29 communication nor evidence derived from those contents shall be  
30 received in evidence or otherwise disclosed in any trial, hearing,  
31 or other proceeding, except a grand jury proceeding, unless each  
32 party, not less than 10 days before the trial, hearing, or proceeding,  
33 has been furnished with a transcript of the contents of the  
34 interception and with the materials specified in subdivision (b).  
35 This 10-day period may be waived by the judge with regard to the  
36 transcript if he or she finds that it was not possible to furnish the  
37 party with the transcript 10 days before the trial, hearing, or  
38 proceeding, and that the party will not be prejudiced by the delay  
39 in receiving that transcript.

1 (d) A court may issue an order limiting disclosures pursuant to  
2 subdivisions (a) and (b) upon a showing of good cause.

3 SEC. 14. Section 629.72 of the Penal Code is amended to read:

4 629.72. Any person in any trial, hearing, or proceeding, may  
5 move to suppress some or all of the contents of any intercepted  
6 wire or electronic communications, or evidence derived therefrom,  
7 only on the basis that the contents or evidence were obtained in  
8 violation of the Fourth Amendment of the United States  
9 Constitution or of this chapter. The motion shall be made,  
10 determined, and be subject to review in accordance with the  
11 procedures set forth in Section 1538.5.

12 SEC. 15. Section 629.74 of the Penal Code is amended to read:

13 629.74. The Attorney General, any deputy attorney general,  
14 district attorney, or deputy district attorney, or any peace officer  
15 who, by any means authorized by this chapter, has obtained  
16 knowledge of the contents of any wire or electronic  
17 communication, or evidence derived therefrom, may disclose the  
18 contents to one of the individuals referred to in this section, to any  
19 judge or magistrate in the state, and to any investigative or law  
20 enforcement officer as defined in subdivision (7) of Section 2510  
21 of Title 18 of the United States Code to the extent that the  
22 disclosure is permitted pursuant to Section 629.82 and is  
23 appropriate to the proper performance of the official duties of the  
24 individual making or receiving the disclosure. No other disclosure,  
25 except to a grand jury, of intercepted information is permitted prior  
26 to a public court hearing by any person regardless of how the  
27 person may have come into possession thereof.

28 SEC. 16. Section 629.76 of the Penal Code is amended to read:

29 629.76. The Attorney General, any deputy attorney general,  
30 district attorney, or deputy district attorney, or any peace officer  
31 or federal law enforcement officer who, by any means authorized  
32 by this chapter, has obtained knowledge of the contents of any  
33 wire or electronic communication, or evidence derived therefrom,  
34 may use the contents or evidence to the extent the use is appropriate  
35 to the proper performance of his or her official duties and is  
36 permitted pursuant to Section 629.82.

37 SEC. 17. Section 629.78 of the Penal Code is amended to read:

38 629.78. Any person who has received, by any means authorized  
39 by this chapter, any information concerning a wire or electronic  
40 communication, or evidence derived therefrom, intercepted in

1 accordance with the provisions of this chapter, may, pursuant to  
2 Section 629.82, disclose the contents of that communication or  
3 derivative evidence while giving testimony under oath or  
4 affirmation in any criminal court proceeding or in any grand jury  
5 proceeding.

6 SEC. 18. Section 629.80 of the Penal Code is amended to read:

7 629.80. No otherwise privileged communication intercepted  
8 in accordance with, or in violation of, the provisions of this chapter  
9 shall lose its privileged character. When a peace officer or federal  
10 law enforcement officer, while engaged in intercepting wire or  
11 electronic communications in the manner authorized by this  
12 chapter, intercepts wire or electronic communications that are of  
13 a privileged nature he or she shall immediately cease the  
14 interception for at least two minutes. After a period of at least two  
15 minutes, interception may be resumed for up to 30 seconds during  
16 which time the officer shall determine if the nature of the  
17 communication is still privileged. If still of a privileged nature,  
18 the officer shall again cease interception for at least two minutes,  
19 after which the officer may again resume interception for up to 30  
20 seconds to redetermine the nature of the communication. The  
21 officer shall continue to go online and offline in this manner until  
22 the time that the communication is no longer privileged or the  
23 communication ends. The recording device shall be metered so as  
24 to authenticate upon review that interruptions occurred as set forth  
25 in this chapter.

26 SEC. 19. Section 629.82 of the Penal Code is amended to read:

27 629.82. (a) If a peace officer or federal law enforcement  
28 officer, while engaged in intercepting wire or electronic  
29 communications in the manner authorized by this chapter,  
30 intercepts wire or electronic communications relating to crimes  
31 other than those specified in the order of authorization, but which  
32 are enumerated in subdivision (a) of Section 629.52, or any violent  
33 felony as defined in subdivision (c) of Section 667.5, (1) the  
34 contents thereof, and evidence derived therefrom, may be disclosed  
35 or used as provided in Sections 629.74 and 629.76 and (2) the  
36 contents and any evidence derived therefrom may be used under  
37 Section 629.78 when authorized by a judge if the judge finds, upon  
38 subsequent application, that the contents were otherwise intercepted  
39 in accordance with the provisions of this chapter. The application  
40 shall be made as soon as practicable.

1 (b) If a peace officer or federal law enforcement officer, while  
2 engaged in intercepting wire or electronic communications in the  
3 manner authorized by this chapter, intercepts wire or electronic  
4 communications relating to crimes other than those specified in  
5 subdivision (a), the contents thereof, and evidence derived  
6 therefrom, may not be disclosed or used as provided in Sections  
7 629.74 and 629.76, except to prevent the commission of a public  
8 offense. The contents and any evidence derived therefrom may  
9 not be used under Section 629.78, except where the evidence was  
10 obtained through an independent source or inevitably would have  
11 been discovered, and the use is authorized by a judge who finds  
12 that the contents were intercepted in accordance with this chapter.

13 (c) The use of the contents of an intercepted wire or electronic  
14 communication relating to crimes other than those specified in the  
15 order of authorization to obtain a search or arrest warrant entitles  
16 the person named in the warrant to notice of the intercepted wire  
17 or electronic communication and a copy of the contents thereof  
18 that were used to obtain the warrant.

19 SEC. 20. Section 629.86 of the Penal Code is amended to read:  
20 629.86. Any person whose wire or electronic communication  
21 is intercepted, disclosed, or used in violation of this chapter shall  
22 have the following remedies:

23 (a) Have a civil cause of action against any person who  
24 intercepts, discloses, or uses, or procures any other person to  
25 intercept, disclose, or use, the communications.

26 (b) Be entitled to recover, in that action, all of the following:

27 (1) Actual damages but not less than liquidated damages  
28 computed at the rate of one hundred dollars (\$100) a day for each  
29 day of violation or one thousand dollars (\$1,000), whichever is  
30 greater.

31 (2) Punitive damages.

32 (3) Reasonable attorney's fees and other litigation costs  
33 reasonably incurred.

34 A good faith reliance on a court order is a complete defense to  
35 any civil or criminal action brought under this chapter, or under  
36 Chapter 1.5 (commencing with Section 630) or any other law.

37 SEC. 21. Section 629.88 of the Penal Code is amended to read:

38 629.88. Nothing in Section 631, 632.5, 632.6, or 632.7 shall  
39 be construed as prohibiting any peace officer or federal law  
40 enforcement officer from intercepting any wire or electronic

1 communication pursuant to an order issued in accordance with the  
2 provisions of this chapter. Nothing in Section 631, 632.5, 632.6,  
3 or 632.7 shall be construed as rendering inadmissible in any  
4 criminal proceeding in any court or before any grand jury any  
5 evidence obtained by means of an order issued in accordance with  
6 the provisions of this chapter. Nothing in Section 637 shall be  
7 construed as prohibiting the disclosure of the contents of any wire  
8 or electronic communication obtained by any means authorized  
9 by this chapter, if the disclosure is authorized by this chapter.  
10 Nothing in this chapter shall apply to any conduct authorized by  
11 Section 633.

12 SEC. 22. Section 629.89 of the Penal Code is amended to read:

13 629.89. No order issued pursuant to this chapter shall either  
14 directly or indirectly authorize covert entry into or upon the  
15 premises of a residential dwelling, hotel room, or motel room for  
16 installation or removal of any interception device or for any other  
17 purpose. Notwithstanding that this entry is otherwise prohibited  
18 by any other section or code, this chapter expressly prohibits covert  
19 entry of a residential dwelling, hotel room, or motel room to  
20 facilitate an order to intercept wire or electronic communications.

21 SEC. 23. Section 629.90 of the Penal Code is amended to read:

22 629.90. An order authorizing the interception of a wire or  
23 electronic communication shall direct, upon request of the  
24 applicant, that a public utility engaged in the business of providing  
25 communications services and facilities, a landlord, custodian, or  
26 any other person furnish the applicant forthwith all information,  
27 facilities, and technical assistance necessary to accomplish the  
28 interception unobtrusively and with a minimum of interference  
29 with the services which the public utility, landlord, custodian, or  
30 other person is providing the person whose communications are  
31 to be intercepted. Any such public utility, landlord, custodian, or  
32 other person furnishing facilities or technical assistance shall be  
33 fully compensated by the applicant for the reasonable costs of  
34 furnishing the facilities and technical assistance.

35 SEC. 24. Section 629.94 of the Penal Code is amended to read:

36 629.94. (a) The Commission on Peace Officer Standards and  
37 Training, in consultation with the Attorney General, shall establish  
38 a course of training in the legal, practical, and technical aspects of  
39 the interception of private wire or electronic communications and  
40 related investigative techniques.



(b) The Attorney General shall set minimum standards for certification and periodic recertification of the following persons as eligible to apply for orders authorizing the interception of private wire or electronic communications, to conduct the interceptions, and to use the communications or evidence derived from them in official proceedings:

(1) Investigative or law enforcement officers.

(2) Other persons, when necessary, to provide linguistic interpretation who are designated by the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or the district attorney, or the district attorney's designee and are supervised by an investigative or law enforcement officer.

(c) The Commission on Peace Officer Standards and Training may charge a reasonable enrollment fee for those students who are employed by an agency not eligible for reimbursement by the commission to offset the costs of the training. The Attorney General may charge a reasonable fee to offset the cost of certification.

*SEC. 25. Section 629.98 of the Penal Code is amended to read:*  
629.98. This chapter shall remain in effect only until January 1, 2014, and as of that date is repealed.

~~SEC. 25.~~

*SEC. 26.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.